IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.7185 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VINODCHANDA SAKARLAL KAPADIA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7185 of 2004

MR YN OZA with MR SAURABH J MEHTA for Petitioner No. 1

MR NAGESH SOOD, AGP for Respondent No. 1-2

RULE SERVED BY DS for Respondent No. 3-5

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 09/08/2004

ORAL JUDGEMENT

In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment and order passed by the Secretary (Appeals), Revenue Department, State of Gujarat dated 26/28-04-2004 passed in Revision

Application No.5 of 1996 whereby dismissing the said revision application and confirming the order passed by the Collector, Surat dated 29-10-1995 confirming the order passed by the authorities below in cancelling the Revenue Entry No.2141 dated 05-04-1991.

2. The brief facts of the case are that one Samubhai Budhiyabhai was the owner of the land bearing Survey No.102, Block No.110 situated at Village Gabheni, Taluka Choryasi, District Surat. During his life time he executed a Will and the land was given to the petitioner herein i.e. Vinodchandra Sakarlal Kapadia. After death of the original land owner i.e. Samubhai Budhiyabhai name of the petitioner came into the revenue record vide Entry No.2141 on 05-04-1991 on the basis of the Will executed by late Samubhai Budhiyabhai. The said entry also came to be certified. However, as the Dy. Collector, Choryasi was of the opinion that the entry was illegal in as much as the transfer in favour the Vinodchandra Sakarlal Kapadia, the petitioner herein, was hit by the provisions of Section 63 of the Bombay Tenancy Act ('the Act' for short) as he could not have become an agriculturist by Will and he could not have become the owner on the basis of the Will executed by Samubhai Budhiyabhai. Accordingly, a proposal was sent to the Collector for taking the Entry No.2141 under suo motu review. Proceedings were initiated and Entry No.2141 dated 05-04-1991 was taken under suo motu review. After giving opportunity the Collector, Surat vide his judgment and order dated 29-10-1985 set aside Entry No.2141 dated 05-04-1991. Being aggrieved and dissatisfied with the said judgment and order passed by the Collector, Surat dated 29-10-1985, the petitioner preferred a revision application before the revisional authority i.e. Secretary (Appeals), Revenue Department, State of Gujarat which was numbered as Revision Application No.5 of 1996, the same was dismissed by judgment and order dated 26-04-2004 and confirmed the order passed by the Collector, Surat dated 29-10-1995. The aforesaid order dated 26-04-2004 is under challenged in the present petition.

3. Mr.Y.N.Oza, learned Senior Counsel appearing on behalf of the petitioner, has submitted that the order passed by both the authorities below in cancelling the Entry No.2141 are absolutely illegal and without jurisdiction and beyond the authorities. He has further submitted that suo motu powers exercised by the Collector was beyond the unreasonable period and as held by the Hon'ble Supreme Court in the case of State of Gujarat Vs. Patel Raghav Natha & Ors., 1969(10) GLR 992 and in view of the catena of judgments of this Court, the Collector

could not have exercised suo motu powers after a period of four years. He was submitted that entry was made on 05-04-1991 and proceedings were initiated on 05-05-1995 i.e. after a period of four years and, therefore, the judgment and order passed by both the authorities below are required to be quashed and set aside. He has further submitted that while considering the RTS proceedings the revenue authorities were not justified in considering the breach of law or any law and could not have gone into validity of the transaction. He has further submitted that whether there is a breach of Section 63 of the Bombay Tenancy Act or not is required to be considered by appropriate authority under the provisions of the Bombay Tenancy Act and the said aspect could not have been considered by the revenue authorities while considering the RTS proceedings. He has relied upon the judgments of this Court in the cases of Evergreen Apartment Co-operative Housing Society Vs. Special Secretary, Revenue Department, 1991(1) GLR 113 and Legal Representatives of Popat Khima Ramani and Ors. Vs. Collector, Rajkot and Ors., reported in 2003(1) GLH 30. While relying upon the aforesaid judgments he has submitted that has held by this Court the revenue authorities were not justified in cancelling the entries on the ground that there is a breach of provisions of other law. Therefore, he has submitted that the order passed by both the authorities below in cancelling the Entry No.2141 on the ground that there will be a breach of Section 63 of the Act is without any jurisdiction and authority of law. He has submitted that number of submissions were made before the revisional authority but the revisional authority has not considered the aforesaid aspects at all and, therefore, requested to allow the present petition.

4. On the other hand, Mr.Nagesh Sood, learned AGP appearing on behalf of the respondent No.1 and 2, has supported the order passed by both the authorities below. He has submitted that the petitioner could not have become the owner of the land in question by virtue of the Will and could not have become the agriculturist and, therefore, there is a breach of Section 63 of the Act and, therefore, the authorities were justified in cancelling the entry.

5. Heard the learned advocates appearing on behalf of the respective parties.

6. Entry in favour of the petitioner was dated 05-04-1991; it was certified immediately. Proceedings were initiated after a period of four years and the said

Entry No.2141 was taken under suo motu review by the Collector which came to be set aside in the year 1995. As held by the Hon'ble Supreme Court in the Case of State of Gujarat Vs. Patel Raghav Natha (supra) and the catena of the judgments of this Court, the Collector could not have exercised the suo motu powers after a period of four years, which is termed as unreasonable period.

7. Apart from the aforesaid facts, as held by this Court in the cases of Evergreen Apartment Co-operative Housing Society (supra) and Legal Representatives of Popat Khima Ramani and Ors. (supra) the revenue authorities while effecting the entry and exercising the powers under Rule 108 of the Bombay Land Revenue Rules are not required to go into validity of title of the land in question. They are also not required to go into validity of the transaction. The revenue authorities are also not required to consider whether by mutating the entry and/or by aforesaid transaction there will be any breach of provisions of any other law or not. The mutation entries are made only for fiscal purpose i.e. for the purpose of collecting revenue. It will be ultimately for the authorities to initiate proceedings for breach of provisions of a particular law. The revenue authorities while conducting the RTS proceedings have no jurisdiction and/or authority to consider whether there is breach of provisions of any other law or not.

8. Considering the aforesaid judgments the Collector, Surat was not justified in cancelling the Entry No.2141 on the ground that there will be breach of Section 63 of the Act and the land should not have transferred by way of Will. It will be ultimately for the authority to initiate the proceedings and determine whether there is any breach of Section 63 of the Act or not and whether the land could have been transferred by way of Will or not. Considering the aforesaid facts, the judgment and order passed by the Collector, Surat in quashing and setting aside the Entry No.2141 in respect of the land in question is required to be quashed and set aside. The judgment and order passed by the revisional authority in confirming the judgment and order passed by the Collector, Surat also requires to be quashed and set aside.

9. For the reasons stated above, the judgment and order dated 26-04-2004 passed by the revisional authority i.e. Secretary (Appeals), Revenue revisional authority State of Gujarat in Revision Application No.5 of 1996 and also judgment and order dated 29-10-1995 passed by the Collector, Surat in setting aside Entry No.2141 dated 05-04-1991 are quashed and set aside. Entry No.2141

dated 05-04-1991 is hereby restored. However, it is clear that these observations and the findings are with regard to the entry only. The appropriate authorities are not precluded from initiating proceedings in accordance with law, if there is any breach of provision of any other law inclusive of the consideration of the question whether the petitioner was agriculturist or not and the land could have been transferred by way of Will or not.

9. With these observations and directions, the petition allow accordingly. Rule made absolute to the aforesaid extent. No order as to costs.

Sd/-

[M.R.SHAH, J]

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'Bhavesh'